

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

V

NEW HAMPSHIRE GREAT CRATES, LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:44 IV liquidated damages

Employer: NH Great Crates LLC, 20 Spaulding Avenue, Rochester, NH 03868

Date of Hearing: March 12, 2014

Case No. 47269

BACKGROUND AND STATEMENT OF THE ISSUES

A Wage Claim was filed with the Department of Labor on January 7, 2014. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on February 19, 2014.

The claimant testified that she worked for the company for three and a half years. She was terminated from employment on December 4, 2013. She stated that she had to seek her final wages payments and even though they were paid, they were paid beyond the allotted time allowed by law.

The claimant believes that the employer was willful and did not have good cause for their action(s) and so she is due the liquidated damages in the amount of \$2,220.09.

The employer testified that they were moving their offices from one location to another. This required a change in address and unfortunately the payroll company sent the paychecks to the vacated address. In an effort to control any problems, the employer wrote hand checks for all wages due and owing.

The employer also said that they were unaware of any payout of leave. There was nothing in the handbook that mandated the payouts.

FINDINGS OF FACT

RSA 275:44 IV reads: "If an employer willfully and without good cause fails to pay an employee wages as required under paragraphs I, II or III of this section, such employer shall be additionally liable to the employee for liquidated damages in the amount of 10% of the unpaid wages for each day except Sunday and legal holidays upon which such failure continues after the day upon which payment is required or in an amount equal to the unpaid wages, whichever is smaller; except that, for the purpose of such liquidated damages such failure shall not be

deemed to continue after the date of filing of a petition in bankruptcy with respect to the employer if he is adjudicated bankrupt upon such petition.”

This is the section of the law that allows for a claimant to seek damages up to the amount of the Wage Claim. The claimant must ask the Hearing Officer to find that the employer was willful and/or did not have good cause for their action(s).

It is the finding of the Hearing Officer, based on the written submissions and the testimony presented for the hearing, that the Wage Claim for liquidated damages is invalid. The claimant has the burden to show that the employer was willful and/or did not have good cause for their action in this case.

The claimant recognized that there was a move going on with the employer and that when she reported the lack of a pay check, the employer wrote hand checks to cover payroll.

The employer was credible in their testimony that a chaotic situation arose when the move was implemented. They did everything they could to have an orderly move and when problems arose they did everything to correct the problems.

There is no finding that the employer was willful and/or did not have good cause for their actions. The request for liquidated damages is denied.

DECISION AND ORDER

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

/s/

Thomas F. Hardiman
Hearing Officer

Date of Decision: April 2, 2014

Original: Claimant
cc: Employer
Employer Attorney

TFH/cag